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United States Department of Agriculture

DIVISION OF BIOLOGICAL SURVEY—Circular No. 43.

DEFINITIONS OF OPEN AND CLOSE SEASONS FOR GAME.

The attention of the Department having been called to the lack of uniformity in stating and interpreting open and close seasons for hunting game, a brief summary of the subject has been prepared in order to bring the matter to the notice of game officials and possibly aid in establishing greater uniformity and less uncertainty. A further reason is to secure authoritative interpretation of existing laws to insure accuracy in the table of close seasons annually published by the Department. It is hoped that all who are in a position to do so will lend their cooperation to this end.

More than a dozen different forms of stating game seasons may be found on the statute books, sometimes several in the laws of a single State. In the case of an old law, the interpretation of which is generally understood, the form of statement perhaps makes little difference to the residents of the State, but when a new law is passed in which a new form of statement is adopted, uncertainty is created. Furthermore, sportsmen visiting other States than their own are often obliged to acquaint themselves with the different interpretations of the laws they encounter. As particular vigilance is exercised to prevent shooting in advance of the first day of an open season, it is important to know the exact date on which hunting begins.

Special annoyance is likely to be caused when the question involves uncertainty as to whether the open season does or does not begin or end on a holiday. Many close or open seasons involve a possible inclusion or exclusion of the Fourth of July, Labor Day, Christmas Day, or New Year's Day, and it is not certain to one unfamiliar with the construction placed upon such a season by the authorities of the State whether shooting is or is not permitted on the holidays in question. In several instances the uncertainty is doubled by a date at each end that possibly covers a holiday. Thus a close season between January 1 and September 1 (September 1 is occasionally Labor Day in nearly all States) is established for deer and mountain goats in Montana, deer in Georgia, upland game birds in South Dakota, grouse in Washington, and squirrels in Iowa.

The inconvenience occasioned by these uncertainties not only affects sportsmen, but is also felt by those concerned in the trade in game. Sale seasons, whether identical with close seasons or not, are equally ambiguous, and the dealer is as dependent on doubtful phrases and conflicting interpretations as the hunter.

The following examples of the various styles of statements in use will illustrate the existing confusion:

EXAMPLES OF VARIANT STATEMENTS OF SEASONS.

BETWEEN

Between the 20th day of December *and* the 10th day of November.
(Illinois, Laws of 1903, p. 206, sec. 1.)

Between the tenth day of November *and* the thirty-first day of December, *both dates inclusive*.

(New Jersey, Laws of 1903, ch. 246, sec. 13.)

Between the twenty-fourth day of December *and* the tenth day of November next ensuing, *both days exclusive*.

(Maryland, Carroll County, Laws of 1898, ch. 112, sec. 1.)

Between and including the months of January and September.

(Tennessee, Code of 1896, p. 668, sec. 2900.)

FROM

From December first *to* the first day of the following September.
(Maine, Public Laws of 1903, ch. 229, sec. 1.)

From the fifteenth day of November *to* the first day of March, *inclusive*.

(Alabama, Laws of 1898-9, No. 292, sec. 3.)

From the first day of September *to* the thirty-first day of December, *both dates inclusive*.

(New Jersey, Laws of 1903, ch. 246, sec. 12.)

From the fifteenth day of February, *until* the first day of November.

(Arkansas, Acts of 1903, Act 162, sec. 1.)

From and after December 15th . . . *and until* September 15th.

(Nevada, Stats. of 1903, ch. cv, sec. 8.)

AFTER

After the fifteenth day of July in any year.

(New Hampshire, Pub. Stats., ch. 132, sec. 4.)

After the 15th day of February *and before* the 15th day of July.

(Nevada, Stats. of 1903, p. 200, ch. cv, sec. 3.)

After the first day of January, *until* the 31st day of August.

(Maryland, Laws of 1904, ch. 439, sec. 14.)

BEFORE

Before the first day of December *and after* the first day of March.

(North Carolina, Laws of 1903, ch. 304, sec. 1.)

ON

On and after the first day of January *until* the 15th day of October.

(Maryland, Laws of 1904, ch. 439, sec. 14.)

OPEN AND CLOSE

The season . . . shall *open on* the first day of November and *close on* the first day of April.

(Louisiana, Acts of 1902, p. 90, Act No. 65, sec. 3.)

BEGIN AND END

The open season . . . shall *begin* September 15 and *end* September 30.

(Colorado, Session Laws of 1903, ch. 112, sec. 7 (1).)

Differences often occur in the laws of a single State. Thus the Nevada game law of 1903 contains the following variations: '*after February 15 and before July 15*'; '*between March 1 and September 15*'; '*from September 15 and until November 15*'; '*from and after December 15 and until September 15*'; '*during the time intervening between September 15 and November 15.*' A law of Allegany County, Md., recently passed, provides as follows:

No person shall kill or destroy any rabbit *on and after* the first day of January *until* the 15th day of October of each and every year, nor any squirrel *after* the first day of January, *until* the 31st day of August of each and every year. (Laws of Maryland, 1904, ch. 439, sec. 14.)

These examples might be multiplied almost indefinitely.

JUDICIAL INTERPRETATION OF TERMS.

If each of the different terms used in the laws had received a positive and single interpretation by the courts, the difficulty would be lessened; but little, if any, certainty has been derived from judicial decisions. Although the exact meaning to be given to such expressions as '*from—to*,' '*between—and*,' '*from and after*,' '*on and after*,' '*until*,' etc., has been often passed on, especially in cases growing out of business relations, yet much diversity of construction has resulted, and there is a growing tendency to interpret such terms according to the facts of each particular case. Formerly attempts were made to establish certain distinctions. Thus it was laid down as a settled principle that when the time is computed *from an act done*, the day of its performance is included; but when the words are '*from the date*,' if a present interest is to commence, the day is included; if it is the terminus from which to compute time, the day is excluded.

In a case which arose in Maine in 1841, the fish committee for the town of Cape Elizabeth was authorized to keep a brook open and free for the passage of fish *from* the 5th day of May to the 5th day of July in each year, and it was held that the act did not authorize the committee to enter upon lands of others and remove obstructions prior to May 6. (*Peables v. Hannaford*, 18 Me., 106.)^a Adherence to this rule of construction has grown less, however, and it was said by the supreme court of Massachusetts about twenty years ago that—

Many early cases stated a distinction between computations *from* a day or date and computations *from* an act done, or *from* an event. But this distinction does not rest upon a sound principle, and in most jurisdictions it is no longer recognized. The tendency of recent decisions is very strongly towards the adoption of a general rule which excludes the day as the *terminus a quo* in such cases. But this rule is not inflexible; and in the interpretation of a statute or contract, it yields to a manifest purpose or intention in conflict with it. (*Seward v. Hayden*, 150 Mass. 158.)

The same court had previously declared that although the prepositions '*from*,' '*until*,' '*between*,' generally exclude the date to which they relate, the general rule will yield to the intent of parties (*Kendall v. Kingsley*, 120 Mass., 94). Bouvier, quoting this decision, adds—

But the rule has not been unvarying and many courts have not hesitated to follow the view of Lord Mansfield in *Cowp.* 714 (overruling his own decision of three years before, *id.* 189), that it is either exclusive or inclusive according to context and subject matter, and the court will construe it to effectuate the intent of the parties and not to destroy it. (*Bouvier's Law Dictionary*, ed. 1897, Vol. 1, p. 853.)

^aSee other cases cited in the American and English Encyclopedia of Law, 2d ed., 1900, vol. 14, p. 553.

Cases supporting the principle that the inclusion or exclusion of the date named depends upon the intent of the maker of the statute or instrument under consideration are very numerous. "This intent is to be determined by the application of the general rules of construction, such as a consideration of the whole instrument, the subject matter of the instrument, the context, etc." (Am. and Eng. Enc. Law, 2nd ed., 1900, vol. 14, p. 553.)^a

From—to is the form of expression involved in a large proportion of cases decided by the courts, but the ambiguity of most of the other terms used in statements of game seasons has brought them frequently before the courts for interpretation, usually in connection with commercial disputes. In the expression *from and after* it has been held that the words are exclusive (State v. Messmore, 14 Wis., 163; Parkinson v. Brandenburg, 35 Minn., 294; Duncan v. Cobb, 32 Minn., 460). But in 1815 the United States Supreme Court held that the act of July 1, 1812, which provided that double duties were to be imposed on all goods imported "from and after the passing of this act" applied to goods imported on July 1, 1812 (Arnold v. U. S., 9 Cranch, 119). In deciding this case Justice Story said:

It is a general rule that when the computation is to be made *from an act done* the day on which the act is done is to be included.^b

In State v. Mounts, 36 W. Va., 190, it was said:

All the best authorities hold that the words 'from' and 'after' may be construed to include or exclude the day of the act, as will best serve to carry out the intention of the legislature, subserve public policy, avoid forfeiture, and validate a proceeding, rather than to annul the same.

Until is generally regarded as a word of exclusion unless a contrary intention appears from the context.^c In People v. Walker, 17 N. Y., 502, it was held that the charter of a bank which was continued in force "until the first day of January, 1850," expired December 31, 1849. In this case the court said:

But the consideration which seems to be strongest, and indeed conclusive upon its meaning in this act, is the obvious one, that to give the word its exclusive meaning ends the corporation at the close of the legal and political year.

On is held to be a word of inclusion; *to* is usually interpreted according to manifest intention. A curious distinction between *on* and *to* appears in People v. Robertson, 39 Barb. (N. Y.), 9. A lease was made for ten years, to commence May 1, 1852, and end *on* May 1, 1862, and the premises were sublet from May 1, 1856, *to* May 1, 1862. It was held by the court that the original lease expired at 12 m. May 1, 1862, and the sublease at 12 at night April 30, 1862, and that during the intervening twelve hours the original lessee had the right of reentry and possession.

^a Leading cases in which this principle is maintained are: Pugh v. Leeds, 2 Cowp. (Eng.), 714; Bigelow v. Willson, 1 Pick. (Mass.), 485; Parkinson v. Brandenburg, 35 Minn., 294; Griffith v. Bogert, 18 How. (U. S.), 163; Union Pac. R. Co. v. Hall, 91 U. S., 348; Taylor v. Brown, 147 U. S., 645; State v. Mounts, 36 W. Va., 190.

^b See also Matthews v. Zane, 7 Wheat. (U. S.), 164, 211; Mallory v. Hills, 4 Met. (Ky.), 53; People v. Clark, 1 Cal., 406.

^c See Ryan v. State Bank, 10 Nebr., 524; Kendall v. Kingsley, 120 Mass., 94; Nichols v. Ramsel, 2 Mod., 280; Bemis v. Leonard, 118 Mass., 502; 19 Am. Rep., 470; Atkin v. Boyleston, F. & M. Ins. Co., 5 Met. (Mass.), 439; 37 Am. Dec., 692; Webster v. French, 12 Ill. (2 Peck), 302; Conway v. Smith Mercantile Co., 6 Wyo., 327.

The form of expression *between—and* (so common in the game laws fixing seasons) has received various interpretations. In Illinois it was held in 1853 that a contract to pay “\$400 between now and the 1st day of September” was not fulfilled by a tender of payment on September 1 (Richardson *v.* Ford, 14 Ill., 332). Similarly in a case arising in New York in 1867 a stipulation to deliver between certain dates was made to exclude the last day named (Fowler *v.* Rigney, 5 Abb. Prac., 182). In a Nebraska case in 1895 the statement in a mechanics’ lien claim that material was furnished “between August 21, 1890, and January 22, 1891,” was interpreted as excluding the first date. These cases were commercial in character and so, perhaps, not strictly analogous to the question under consideration. A Rhode Island decision of 1897, however, had it been fuller, might have been more serviceable in the present connection. In this case (State *v.* Stone, 20 R. I., 269), the possessor of 19 partridges out of season undertook a defense based on the uncertainty of the law in its statement of seasons, and the court held that the expression ‘from the first day of January to the first day of October’ was equivalent to ‘between the first day of January and the first day of October,’ and hence free from uncertainty. But as it is not stated whether the latter form of expression is inclusive or exclusive, the decision throws little light on the question of interpretation of the terms quoted.

OFFICIAL INTERPRETATION OF TERMS.

As courts are seldom called on to interpret these ambiguous terms as used in statements of open and close seasons, interpretation is left to the authorities charged with enforcing the game laws of the various States. Hence when such terms are used it is impossible to know the exact dates of beginning and ending, except through familiarity with the practice of the State in each case. The extent of variety of interpretations is well shown by a few instances, brought out mainly by recent correspondence of the Department. In Minnesota the open season for deer, ‘between November 10th and November 30th,’ is interpreted as including both the dates named, and thus permits hunting on each; while the Montana close season for deer, ‘between January 1st and September 1,’ is construed so as to include the first date and exclude the last, and thus allow deer hunting on September 1, but not on January 1. In Maine the close season for moose, ‘between the first day of December and the fifteenth day of October,’ is interpreted, like Montana’s deer season, as including the first day and excluding the last; but that for deer, ‘between December fifteenth and October first,’ is regarded as excluding both dates, and the immediately following statement of the open season for deer, ‘between October first and December fifteenth,’ is so read as to include both dates. In Delaware the open season for quail, ‘between the fifteenth day of November and the thirty-first day of December,’ is interpreted as including both dates, thus permitting shooting on both November 15 and December 31; but in the close season for rails, ‘between the first day of February and the first day of September,’ the words used are regarded as exclusive, and rail shooting is allowed on both of the dates named; while the Massachusetts close season for quail, ‘between the first day of December and the first day of October,’ is held to include the first date and exclude the last.

A condensed summary of these and a few other seasons the exact interpretation of which is known, with included dates in italics and excluded dates in roman type, will show this diversity more clearly:

Maine	Close season, moose	Between <i>Dec. 1</i> and Oct. 15.
	Close season, deer	Between Dec. 15 and Oct. 1.
	Open season, deer	Between <i>Oct. 1</i> and <i>Dec. 15</i> .
Massachusetts	Close season, quail	Between <i>Dec. 1</i> and Oct. 1.
Pennsylvania	Open season, wild fowl	From <i>Sept. 1</i> to <i>May 1</i> .
Delaware	Open season, quail	Between <i>Nov. 15</i> and <i>Dec. 31</i> .
	Close season, rails	Between Feb. 1 and Sept. 1.
Indiana	Close season, quail	From <i>Jan. 1</i> to Nov. 10.
Minnesota	Open season, deer	Between <i>Nov. 10</i> and <i>Nov. 30</i> .
Iowa	Close season, quail	Between <i>Dec. 15</i> and Nov. 11.
Missouri	Close season, deer	Between <i>Jan. 1</i> and Oct. 1.
Nebraska	Open season, deer	Beginning on <i>Aug. 15</i> and ending on <i>Nov. 15</i> .
North Dakota	Close season, deer	Between <i>Dec. 1</i> and Nov. 10.
Montana	Close season, deer	Between <i>Jan. 1</i> and Sept. 1.

It will be noticed that in this list open seasons are interpreted to include both the dates named, while close seasons are interpreted as including the first date and excluding the last, or occasionally as excluding both dates. This is clearly due to a tendency to give the hunter the benefit of the uncertainty, and thus avoid prosecutions in doubtful cases. But, though the rule is quite general, it is not invariable, and can not serve as a reliable guide to interpretation. When the statement of the season begins with the first day of a month or ends with the last day it is probable, though not certain, that the date is included, and when it begins with the last day of a month or ends with the first the date is probably excluded. When, however, the date of beginning or ending is some other day of the month there is little clew, especially in the case of close seasons, whether it is included or excluded.

REMEDIES.

Three features characterize the statements of game seasons in existing laws: Variety, uncertainty, and inconvenience. Some laws state open seasons during which killing is permitted, others close seasons during which killing is prohibited, and a number of different terms are used in the statements. Of these terms *between* — *and* is used preferably by nearly 30 States and all the Provinces of Canada except British Columbia, and the form *from* — *to* (or *from* — *until*) is used exclusively or preferably by 7 States—Arkansas (1903), Florida, Indiana, Kansas, Ohio, Tennessee, and Wyoming.

Sometimes ambiguity is obviated, especially when it is the open season that is given, by adding 'inclusive,' 'both inclusive,' or 'both dates inclusive,' as is the practice in Alabama, Alaska, Connecticut, Michigan, New Jersey, New York, Pennsylvania, Rhode Island, British Columbia, Newfoundland, and Nova Scotia. The expression 'during the month of,' which appears in the game laws of New Mexico and is used to a limited extent by several States, removes uncertainty, but as many seasons include parts of months, it is available only in special instances. Such forms as 'the season shall begin ——— and end ———,' adopted by Colorado and Nebraska, or 'shall open on ———

and close on ———,' employed by Louisiana in its game law for 1902, are nearly, if not entirely, free from ambiguity.

All these statements, however, are open to the objection of inconvenience. It is of course perfectly clear to state the open season thus: 'From September 1 to November 30, both dates inclusive;' or, 'between August 31 and December 1, both dates exclusive.' But the much more common plan to include the first date and exclude the last is preferable, as the opposite season may be shown by a mere reversal of the dates. This method, which practically amounts to giving the first date of the open and the first of the close season, has been adopted by the Department in its published tables of close seasons for game, for the sake of clearness and uniformity; and as many persons are directly interested in the game seasons of various States, its general adoption would be of much advantage. It could be employed and all ambiguity removed by making the form of statement 'from September 1 to December 1, first date inclusive;' or, 'from September 1, inclusive, to December 1, exclusive,' but the unfamiliarity of such forms of expression would make it difficult for legislators to retain them in mind in all cases.

A much more convenient system, adopted by Vermont in 1892, New York in 1894, and New Brunswick and the Northwest Territories in 1903, is *to include in the laws a definite rule of interpretation of seasons*. Thus Vermont provides that "If an act is prohibited between two dates, the prohibition shall include the first but not the last date"^a (Vermont Stats., 1894, sec. 4562); and the Northwest Territories provide that "The period of close seasons shall include the first date but not the last-mentioned" (Ordinances for 1903, ch. 29, sec. 2, subsec. 8). New Brunswick's provision makes the dates exclusive, and hence, while obviating uncertainty, does not permit the use of a form by which they can be reversed to show the opposite season.

The general adoption of the Vermont plan would secure uniformity, certainty, and convenience, and has the additional advantage of requiring the least change in the present form of statement and method of interpretation; for the words most commonly used in stating game seasons are *between—and*, and while there are differences of interpretation of these terms by different States, yet the custom of including the first date and excluding the last is more general than any other. The principle underlying this plan has the support of several decisions of State courts in regard to computation of time under the laws. Thus in a New York decision it was stated that "As a general thing, in computing statute time, the first day is included and the last excluded." (Commercial Bank of Oswego v. Ives, 2 Hill, 355.) And, finally, it may be stated that the plan suggested is directly analogous to the rule of computation of time for other purposes found in many of the State codes, and also to the rules of construction of words and phrases, found in practically all codes and in several of the general game laws.

^aThis is the present wording, taken from the code of 1894. The original statute, approved November 22, 1892, provided that "Where an act is prohibited between two dates, it is not lawful upon the first date named, and is lawful upon the date last named." The New York law (which is rendered unnecessary by the use of the expression "both inclusive" in the present law) follows the Vermont statute of 1892, but adds, "but when such last date shall fall upon Sunday, it shall be lawful to shoot, hunt or fish on the preceding Saturday, as if that day was the date so named in this act." (Laws of 1894, ch. 183.)

Such a rule could easily be incorporated at the time a new game law for a State is adopted, and the new statements of seasons made to conform to it. With little trouble, therefore, existing annoyance could be obviated and a system established that would be clear, consistent, and convenient.

HENRY OLDYS,
Assistant, Biological Survey.

Approved:

JAMES WILSON,

Secretary of Agriculture.

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